IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

Crl.MC.No. 2405 of 2007()

LPC.137/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR
[CRIME NO.105/94 OF PAYYANGADI POLICE STATION]

.....

PETITIONER: ACCUSED NO.5 IN 137/2002

KHALEEL RAHMAN, S/O.ALI MUHAMMED,
TOUFEEQ MANZIL, P.O.MADAYI, KANNUR.

BY ADV. SRI.T.K.SAIDALIKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL

RESPONDENTS:

---

1. SUB INSPECTOR OF POLICE, PAYANGADI,

2. THE STATE REPRESENTED BY ITS PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2405 of 2007

Dated this the 26th day of July 2007

O R D E R

The petitioner was the eighth accused in crime No.105/1994 of Payyangadi police station registered inter alia under Section 326 read with 149 I.P.C. Altogether there were 26 accused persons. The petitioner was not available for trial. The trial against the co-accused had proceeded. The crux of the allegations is that on account of animosity between two political groups, the accused persons who were members of an unlawful assembly indulged in wanton acts of violence causing injuries to members of the rival political group as also to some of the police officers who were on duty.

2. As the petitioner was not available for trial, the trial proceeded against some of the co-accused who had entered appearance. Evidence was adduced. On the basis of the evidence available in those cases, the co-accused were found not guilty and acquitted. The petitioner has now come before this court with this petition under Section 482 Cr.P.C with the prayer that the proceedings against him may be quashed.

3. What is the reason? The learned counsel for the petitioner submits that in as much as the evidence in the trial held against the co-accused does not at all show any incriminating material against the

petitioner herein, the petitioner may be given the benefit of the said order of acquittal and the case against him may be quashed.

4. It appears to me that it is too late in the day to advance this contention. The decision of the Full Bench in Moosa vs. Sub Inspector of Police [2006(1) KLT 552 (FB)] has finally set at rest all the controversies on this aspect. In the trial against the co-accused, the State/complainant was not expected to adduce any evidence against the petitioner. The fact that there is no evidence against the petitioner in that case or the witnesses examined in that case had turned hostile cannot according to me entitle the petitioner to any benefit or advantage. It is impossible to hazard an opinion as to whether the witnesses will be able to identify the petitioner or not in the trial to be held when he is in the box. I am in these circumstances of the opinion that there is no warrant for invocation of the powers under Section 482 Cr.P.C even assuming that it may be expedient to do so or assuming that the witnesses may not tender any better evidence in the trial which is to follow. Such assumptions cannot obviously made.

5. In the result, this petition is dismissed. The learned counsel for the petitioner finally prays that indulgence may be shown to the petitioner and there may be a direction to expeditious disposal

of the proceedings against him in as much as he, a person employed abroad, has to return to his place of employment. It is for the petitioner to appear before the learned Magistrate and and apply for bail at the first instance. The learned Magistrate must consider such application on merits, in accordance with law and expeditiously on the date of surrender itself, if sufficient prior notice is given to the Prosecutor in charge of the case. The courts must also consider the prayer of the petitioner for an expeditious disposal of the case in the peculiar facts and circumstances of the case. The petitioner can apply for the same. If it be not possible for the court to immediately take up the matter for trial, the petitioner can apply for exemption from personal appearance and for permission for the counsel to represent him until he returns. Such application must be considered by the learned Magistrate, in accordance with law.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007